

# COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG  
LONDON LOS ANGELES NEW YORK PALO ALTO  
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 6000

June 21, 2021

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
45 L Street, NE  
Washington, DC 20554

## **Re: Notice of *ex parte* presentation in MB Docket No. 21-141**

Dear Ms. Dortch:

On June 16, 2021, the following representatives of Global Media & Entertainment Investments Ltd (“GMEI”) met by video conference with Albert Shuldiner, Chief, and Christopher Clark, Assistant Division Chief, both of the Media Bureau’s Audio Division: Ashley Tabor-King OBE, Stephen Miron, and Seb Enser-Wight, all of Global Media & Entertainment (“Global”) and appearing in their capacity as advisors to GMEI; Mark Greene of Cravath, Swaine & Moore LLP, as outside corporate counsel to GMEI; and the undersigned, as outside regulatory counsel to GMEI. Consistent with GMEI’s prior filings, the GMEI representatives emphasized that the record in this proceeding supports grant of the Petition for Declaratory Ruling (“Petition”) of iHeartMedia, Inc. (“iHeart”), with an advance approval ruling that would allow GMEI and the GMEI Reporting Persons to increase their investment up to a non-controlling interest of 49.99%.<sup>1</sup>

GMEI and the GMEI Reporting Persons are well-qualified investors with a sincere and demonstrated commitment to the radio broadcasting sector, from countries with excellent relations with the United States. They desire the ability to increase their investment in iHeart, a publicly traded company that has sought and received approval from the Federal Communications Commission (the “FCC” or the “Commission”) to accept up to 100% foreign ownership.

iHeart, however, is attempting to limit advance approval for GMEI to just 14.99%, an arbitrary hard cap that would be removable only at iHeart’s request. Ceding to iHeart’s request would co-opt the FCC’s advance approval process to serve as a *de facto* poison pill on GMEI, and GMEI alone. The Commission should reject iHeart’s attempt to use the FCC’s advance approval process as a corporate defense mechanism, and instead allow marketplace and other private and

---

<sup>1</sup> See Comments of GMEI, MB Docket No. 21-141 (filed May 10, 2021); *Ex Parte* Letter of GMEI, MB Docket No. 21-141 (filed June 9, 2021).

## COVINGTON

June 21, 2021

Page 2

public mechanisms to play their appropriate roles in determining whether, and to what extent, GMEI may increase its non-controlling investment in iHeart.

The GMEI representatives further explained that were the Commission to limit GMEI's advance approval to the 14.99% cap proposed by iHeart, GMEI could be effectively precluded from ever successfully increasing its investment above that level. In fact, there is reason to believe that iHeart would refuse to file a remedial petition for declaratory ruling to accommodate any such increased investment.

As iHeart emphasized in its reply comments in this proceeding, the FCC's rules do not necessarily require a public company to file a remedial petition when new foreign investment exceeds the scope of its existing declaratory rulings.<sup>2</sup> Instead, the rules provide licensees with two options: (1) they may file a remedial petition; or (2) they may come back into compliance with their declaratory ruling another way, such as by "redeeming the foreign interest(s) that rendered the licensee non-compliant with the licensee's existing foreign ownership ruling" to the extent their corporate charter so permits.<sup>3</sup>

iHeart stated in the record that it has "no intention" of filing additional remedial petitions, and its charter provides it with the authority to redeem foreign interests as contemplated by the rule.<sup>4</sup> GMEI can only conclude that, if the FCC were to agree to iHeart's arbitrary 14.99% cap, iHeart would use the power of that FCC ruling to prevent GMEI, a qualified and at that point specifically approved investor, from ever increasing its investment above that level. As a result, in this proceeding iHeart is attempting to position the Commission as the final arbiter of the ultimate level of GMEI's investment in iHeart. This is contrary to the FCC's longstanding policy that its procedures should "promote strict government neutrality" in corporate matters.<sup>5</sup>

If iHeart wishes to limit outside investment, it can seek to adopt one of the corporate defense mechanisms available to Delaware corporations in furtherance of that desire; iHeart is familiar with such corporate defense mechanisms, as it had a poison pill in place as recently as May 2021. iHeart's attempt to use the FCC's processes to achieve the same result — though specific to GMEI, not to investors generally — is a misuse of the foreign ownership rules that the FCC should not abide.

In short, both the public interest and the FCC's longstanding policy on maintaining neutrality in commercial matters support the FCC's grant of GMEI's request for advance

---

<sup>2</sup> Reply Comments of iHeartMedia, Inc., MB Docket No. 21-141, at 5 (filed May 24, 2021) (hereinafter "iHeart Reply Comments") (stating that "iHeart elected to file a remedial petition for declaratory ruling instead of pursuing other remedial action").

<sup>3</sup> 47 C.F.R. § 1.5004(f)(4).

<sup>4</sup> iHeart Reply Comments at 3.

<sup>5</sup> *In Re Tender Offers & Proxy Contests*, Policy Statement, FCC 86-67, 59 Rad. Reg. 2d (P & F) 1536, at para 6 (1986).

**COVINGTON**


June 21, 2021

Page 3

approval for GMEI and the GMEI Reporting Persons to invest up to the non-controlling 49.99% level in iHeart.

Please direct any questions to the undersigned.

Sincerely,

A handwritten signature in blue ink, reading "Matthew S. DelNero". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Matthew S. DelNero

Hannah Lepow

*Counsel to Global Media &  
Entertainment Investments  
Ltd*

cc: Albert Shuldiner  
Christopher Clark